

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 203 Growth Management

SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, McClain and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	9 Y, 5 N, As CS	Rivera	Miller
2) Commerce Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida's growth and development is managed statewide by the State Comprehensive Plan. Local governments are required to adopt county or municipal comprehensive plans to manage future growth in their communities. State and local comprehensive plans are balanced against private property rights and must be consistent with and recognize the protection of those rights. The U.S. and Florida Constitutions protect property owners from a governmental taking of property without just compensation. Florida law also entitles property owners to relief when a local government inordinately burdens an owner's existing property right.

Local comprehensive plans are required to have nine specific elements, but may include additional elements. The required elements must plan matters such as transportation, land conservation, capital improvements, and recreation and open space. Plans must be reviewed and amended, if necessary, every seven years to reflect any changes in state requirements. Generally, local comprehensive plan amendments go through an expedited state review process before adoption. Amendments to reflect changes in state law, and certain other types of amendments, must follow a state coordinated review process overseen by the Department of Economic Opportunity.

The bill requires a local comprehensive plan to have a property rights element requiring the local government to consider certain private property rights affecting the possession, use, enjoyment, and disposal of property in its decision-making process. Local governments must adopt the property rights element during their next seven-year state coordinated review plan amendment process, or by July 1, 2023 if the plan is not scheduled for review before that date. Local governments may develop their own language if it does not conflict with the model statement of rights.

The bill may have an insignificant fiscal impact on local governments not scheduled to update their comprehensive plans before 2024, because the bill requires all local plans to be amended by July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Private Property Rights

The “Bert Harris Jr., Private Property Rights Protection Act” (Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner’s existing use, or a vested right to a specific use, of real property.¹ The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the State Constitution or the U.S. Constitution and establishes a separate and distinct cause of action for relief, or payment of compensation, when a new law, rule, or ordinance of the state or a political entity in the state, unfairly affects real property.² The Harris Act applies generally to state and local governments but not to the U.S. government, federal agencies, or state or local government entities exercising formally delegated U.S. or federal agency powers.³

In addition to action inordinately burdening a property right, an owner may seek relief when a state or local governmental entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.⁴ A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.⁵

The “Florida Land Use and Environmental Dispute Resolution Act” (Land Use Act) allows a landowner to request relief from a government entity’s development order or enforcement action when the order or action is unreasonable or unfairly burdens the use of the owner’s real property.⁶ Parties in pending judicial proceedings may also use the dispute resolution process outlined in the Land Use Act if all parties agree and the court approves.⁷

State and Local Comprehensive Plans

Laws protecting private property rights are balanced against the state’s need to effectively and efficiently plan, coordinate, and deliver government services amid the state’s continued growth and development.⁸ The State Comprehensive Plan provides long-range policy guidance for the orderly social, economic, and physical growth of the state,⁹ which must be consistent with the protection of private property rights.¹⁰ Local governments are required to adopt local comprehensive plans to manage the future growth of their communities under the Community Planning Act.¹¹

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida’s Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.¹² The Community Planning Act governs how local governments create and adopt their local comprehensive plans. The Legislature intended for all governmental entities in the

¹ S. 70.001(2), F.S.

² S. 70.001(1), F.S.

³ S. 70.001(3)(c), F.S.

⁴ S. 70.45(2), F.S.

⁵ S. 70.45(1)(c), F.S.

⁶ S. 70.51(3), F.S.

⁷ S. 70.51(29), F.S.

⁸ See s. 186.002(1)(b), F.S.

⁹ S. 187.101(1), F.S.

¹⁰ S. 187.101(3), F.S. The plan’s goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.

¹² See ch. 2011-139, s. 17, L.O.F.

state to recognize and respect judicially acknowledged or constitutionally protected private property rights.¹³ Authority under the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.¹⁴

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan.¹⁵ Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.¹⁶ Plans may include optional elements,¹⁷ but must include the following nine elements:

- Capital improvements;¹⁸
- Future land use plan;¹⁹
- Intergovernmental coordination;²⁰
- Conservation;²¹
- Transportation;²²
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;²³
- Recreation and open space;²⁴
- Housing;²⁵ and
- Coastal management (for coastal local governments).²⁶

Counties and municipalities may employ individual comprehensive plans or joint plans if both entities agree. Counties and municipalities may also coordinate plans in any combined manner that aligns with their common interests.²⁷ A county plan controls in a municipality until a municipal comprehensive plan is adopted. New municipalities must adopt a comprehensive plan within three years after the date of incorporation.²⁸

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every seven years to reflect any changes in state requirements.²⁹ Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.³⁰ A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.³¹

¹³ S. 163.3161(10), F.S.

¹⁴ S. 163.3161(10), F.S.

¹⁵ S. 163.3177(1), F.S.

¹⁶ S. 163.3177(1)(d), F.S.

¹⁷ S. 163.3177(1)(a), F.S.

¹⁸ S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

¹⁹ S. 163.3177(6)(a), F.S.

²⁰ S. 163.3177(6)(h), F.S.

²¹ S. 163.3177(6)(d), F.S.

²² S. 163.3177(6)(b), F.S.

²³ S. 163.3177(6)(c), F.S.

²⁴ S. 163.3177(6)(e), F.S.

²⁵ S. 163.3177(6)(f), F.S.

²⁶ S. 163.3177(6)(g), F.S.

²⁷ S. 163.3167(1), F.S.

²⁸ S. 163.3167(3), F.S.

²⁹ S. 163.3191, F.S.

³⁰ S. 163.3203, F.S.

³¹ S. 163.3161(12), F.S.

Generally, a local government amending its comprehensive plan must follow an expedited state review process.³² Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process for the adoption of comprehensive plans.³³ Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.³⁴ The Department of Economic Opportunity (DEO) is designated as the state land planning agency.³⁵

Under the state coordinated review process, local governments must hold a properly noticed public hearing³⁶ about the proposed amendment before sending it for comment from several reviewing agencies, including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of State.³⁷ Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.³⁸ Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.³⁹

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.⁴⁰ The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.⁴¹ Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.⁴² Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the hearing.⁴³

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law⁴⁴ and to issue on its website a notice of intent finding whether or not the amendment is compliant.⁴⁵ A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.⁴⁶ Unless the local comprehensive plan amendment is challenged, it takes effect pursuant to the notice of intent.⁴⁷ If there is a timely-filed challenge, then the plan amendment will not take effect until DEO or the Administration Commission enters a final order determining the adopted amendment is in compliance with the law.⁴⁸

Effect of Proposed Changes

The bill requires local governments to include a property rights element in their comprehensive plans at their next proposed plan amendment or by July 1, 2023, whichever comes first. The bill provides that a local government may develop its own property rights language if such language does not conflict with

³² S. 163.3184(3)(a), F.S.

³³ S. 163.3184(2)(c), F.S.

³⁴ S. 163.3184(4)(a), F.S.

³⁵ S. 163.3164(44), F.S.

³⁶ S. 163.3184(4)(b) and (11)(b)1., F.S.

³⁷ S. 163.3184(4)(b) and (c), F.S.

³⁸ S. 163.3184(4)(b), F.S.

³⁹ S. 163.3184(4)(c), F.S.

⁴⁰ S. 163.3184(4)(d)1., F.S.

⁴¹ S. 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. S. 163.3184(4)(d)2., F.S.

⁴² S. 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. S. 163.3184(4)(e)1., F.S.

⁴³ S. 163.3184(4)(e)2., F.S.

⁴⁴ S. 163.3184(4)(e)3. and 4., F.S.

⁴⁵ S. 163.3184(4)(e)4., F.S.

⁴⁶ S. 163.3184(4)(e)4., F.S.

⁴⁷ S. 163.3184(4)(e)5., F.S.

⁴⁸ S. 163.3184(4)(e)5., F.S.

the model statement of rights. The model statement of rights requires the local government to consider the following in local decision-making:

1. Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights;
2. Quiet enjoyment of the property, to the exclusion of all others;
3. Use, maintenance, development, and improvement of the property for personal use or the use of any other person, subject to state law and local ordinances;
4. Privacy and exclusion of others from the property to protect the owner's possessions and property; and
5. Disposal of the property owner's property through sale or gift.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3177, F.S., requiring the comprehensive plan to include a private property rights element.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant fiscal impact on local governments not scheduled to review their plans before 2024 due to the requirement to amend their comprehensive plans by July 1, 2023, to include a property rights element.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities that are not scheduled to amend their comprehensive plans before 2024 to amend their plans by July 1, 2023. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 23, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed language from the bill that was included in CS/CS/HB 7103 (2019) and signed into law after the 2019 session as ch. 2019-165, Laws of Fla.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs subcommittee.